

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
TELEX COMMUNICATIONS, INC.)
)
Request for Waiver To Allow The Use Of)
Certificated Wireless Intercom Equipment at)
Nuclear Facilities for Security Operations near)
Reactors)

ORDER

Adopted: November 23, 2004

Released: November 29, 2004

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us the above-captioned request for waiver filed by Telex Communications, Inc. ("Telex").¹ Telex seeks a blanket waiver of the Commission's Rules to permit operation of its equipment² at certain nuclear facilities in spectrum reserved for over-the-air television broadcasting.³ For the reasons discussed herein, we deny Telex's waiver request.

2. *Background.* Telex is a manufacturer of wireless intercom and telecommunications equipment.⁴ On March 13, 2003, Telex filed a request for special temporary authority (STA) with the Experimental Licensing Branch of the Commission's Office of Engineering and Technology (OET) to permit immediate and temporary use of certain Telex wireless headsets and intercom products at nuclear facilities in the continental United States.⁵ The STA was granted on April 17, 2003, and subsequently extended.⁶ Telex indicates in its waiver request that the initial experimental STA was granted by OET contingent upon Telex seeking a waiver for permanent, long-term use of its devices at nuclear facilities in the United States.⁷

¹ See Request for Special Waiver filed on May 6, 2003 by Telex Communications, Inc. (Telex waiver request).

² The specific Telex model numbers listed in the waiver request are BTR300, BTR500, BTR600, BTR700, BTR800, TR300, TR500, TR600, TR700, TR800, and TR825. *Id.* at 3-4.

³ The requested frequency bands of operation are the 174-216 MHz, 470-608 MHz and 614-806 MHz bands, which correspond to TV channels 7-13, 14-36, and 38-69, respectively. See 47 C.F.R. § 73.603(a) for numerical designation of television channels.

⁴ See Telex waiver request at 1.

⁵ See Experimental Call Sign WB9XSY. See also STA file numbers 0135-EX-ST-2003 and 0169-EX-ST-2004.

⁶ STA file number 0135-EX-ST-2003 was granted on April 7, 2003. In addition, STA file number 0169-EX-ST-2004 was granted on April 7, 2004 and is set to expire on October 7, 2004.

⁷ See Telex waiver request at 2. In comments filed after the initial experimental STA request was granted, United Telecom Council ("UTC") indicated that it supported Telex's experimental STA request. See Letter dated April 21, 2003 from Jill M. Lyon, Vice President & General Counsel, UTC, to Experimental Licensing Branch, Office of

3. On May 6, 2003, Telex filed a waiver request with the Commission's Wireless Telecommunications Bureau's Public Safety and Private Wireless Division.⁸ As justification for the waiver request, Telex indicates that, due to heightened security measures at nuclear facilities across the country, all current nuclear facilities are seeking immediate deployment of secure wireless intercom systems.⁹ In addition, Telex indicates that it supplies encrypted audio wireless intercom devices to virtually all of the nuclear facilities in the United States.¹⁰ Further, Telex indicates that the equipment will be deployed inside the nuclear facilities' shielded containment vessel or in the cooling containment areas of the plants, which will substantially attenuate all the emissions outside the nuclear facilities.¹¹ Telex indicates that the equipment listed in its waiver request is certificated under the equipment authorization provisions of the Commission's rules for use by entities eligible under Part 74 of the Commission's Rules.¹² Telex recognizes that entities which operate Telex's equipment at nuclear facilities fail to satisfy the eligibility requirements contained in Part 74 of the Commission's Rules.¹³ As a result, Telex seeks waiver of the Commission's rules to establish permanent blanket licensing authority for Part 90 entities eligible for Business/Industrial licenses to deploy its equipment on television broadcasting spectrum at nuclear facilities nationwide on a permanent basis.

4. *Discussion.* The Commission will grant a waiver of its rules if it is shown that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁴ Based on the record before us, we believe that Telex has not made the requisite showing for grant of a blanket waiver.

Engineering and Technology at 1 (UTC Letter). UTC indicated that the Telex equipment has been in use at nuclear facilities for some time, generally without the knowledge of telecommunications network managers for the parent utilities and that, once the operation was discovered, the need for an STA and a permanent rule waiver was self-evident. It also stated that it did not anticipate that use of the Telex equipment at nuclear power plants would cause interference to broadcast operations because a) they would be used mostly inside heavily protected containment buildings; and b) nuclear power plants generally are located far from population centers, on large tracts of land. UTC also said that it would fully support an anticipated permanent request for waiver of the Commission's rules to permit nuclear plant employees use of the equipment within nuclear power plants.

⁸ The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

⁹ See Telex waiver request at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² See Telex waiver request at 1. See also 47 C.F.R. §§ 2.901-2.1093.

¹³ See Telex waiver request at 1 n.1. See also 47 C.F.R. § 74.801.

¹⁴ See 47 C.F.R. § 1.925(b)(3).

5. Section 2.106 of the Commission's rules contains the table of frequency allocations.¹⁵ Within the table of frequency allocations, 174-216 MHz, 470-608 MHz, and 614-806 MHz frequency bands are reserved for primary use by over-the-air television broadcasting entities which are regulated under Parts 73 and 74 of the Commission's rules.¹⁶

6. Telex requests, in essence, that equipment certified for use under Part 74 of the Commissions Rules by broadcast auxiliary stations now be regulated under Part 90 of the Commission's Rules to permit the blanket authorization of the operation of these devices at nuclear facilities nationwide. Telex argues that grant of a waiver would not frustrate the purpose of the Part 73 and Part 74 rules because no interference would occur outside the nuclear facility.¹⁷ It states that this is the case because the equipment will be used only inside the facilities' shielded containment vessel or cooling containment area, except possibly during brief periods when the doors to those facilities are opened for refueling.¹⁸ In its comments to the STA request, however, UTC pointed out that refueling operations are the most common use of hands-free headsets.¹⁹ Telex itself concedes that signal attenuation outside the reactor areas would vary from facility to facility.²⁰ In addition, we question whether we can rely with certainty on Telex's representations regarding the actions of nuclear power plant workers that Telex neither represents nor controls.

7. Also, Telex has not demonstrated that Part 90 frequencies – for which nuclear facilities are eligible – would not suffice to provide the kind of communications services asserted to be necessary in such facilities. Moreover Telex has not shown that it is incapable of adapting the instant equipment – or producing new equipment – to provide the same functionality on Part 90 frequencies. Finally, Telex has not shown that there is no currently available equipment, which operates on Part 90 frequencies, that would safely satisfy the communications requirements of nuclear facilities.

8. We conclude that a blanket waiver authorizing use of the subject Telex equipment at all nuclear facilities in the continental United States is not supported by the record currently before us. We therefore deny the Telex request. Nuclear facilities differ in their designs and procedures, and in their proximity to urban areas and over-the-air broadcasters. We believe that we would need to evaluate the relevant technical criteria – particularly the frequencies proposed to be used at the facility vis-à-vis the channels being used by local broadcasters – and the safeguards taken by each facility to avoid interference

¹⁵ See 47 C.F.R. § 2.106.

¹⁶ See generally 47 C.F.R. §§ 73.1-73.7005, 74.1-74.1290.

¹⁷ See Telex waiver request at 2.

¹⁸ *Id.*

¹⁹ See UTC letter at 1.

²⁰ See Telex waiver request at 2.

to over-the-air broadcasting before we could rule on a particular waiver request. Thus, were we to grant such waivers, the requests would each require a detailed technical analysis before they could be granted.²¹

9. Accordingly, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the waiver request filed by Telex Communications, Inc. on May 6, 2003 IS HEREBY DENIED.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

²¹ We note that there appear to be several discrepancies between the operational specifications of the equipment listed in Telex's waiver and the operational specifications listed on Telex's equipment authorizations. Telex should be aware that if the equipment specified in the waiver request has been altered in any way it will be required to file an application for a new equipment authorization. *See* 47 C.F.R. § 2.932(a). The following table references the model numbers, corresponding equipment authorizations and apparent discrepancies.

Telex Model No. (Equipment Authorization No.)	Data from equipment list attached to waiver request	Data from equipment authorization
BTR700 (B5DM516)	<u>Freq Band</u> : 470-608 MHz, 614-740 MHz <u>Emission Designator</u> : 190KF1E	<u>Freq Band</u> : 518-608 MHz <u>Emission Designator</u> : 160KF3E
BTR800 (B5DM514)	<u>Freq Band</u> : 470-608 MHz, 614-740 MHz <u>Emission Designator</u> : 190KF1E	<u>Freq Band</u> : 518-608 MHz <u>Emission Designator</u> : 90K0F3E
BTR500 (B5DM505)	<u>Emission Designator</u> : 190KF1E	<u>Emission Designator</u> : 180KF3E
BTR300 (B5DM510)	<u>Freq Band</u> : 150-216 MHz <u>Emission Designator</u> : 190KF1E	<u>Freq Band</u> : 150-174 MHz <u>Emission Designator</u> : 20K4F3E
TR825 (B5DM517)	<u>Emission Designator</u> : 190KF1E	<u>Emission Designator</u> : 74K0F3E
TR700 & TR800 (B5DM515)	<u>Emission Designator</u> : 190KF1E	<u>Emission Designator</u> : 91K03F3
TR500 (B5DM506)	<u>Emission Designator</u> : 190KF1E	<u>Emission Designator</u> : 180KF3E
TR300 (B5DM513)	<u>Freq Band</u> : 150-216 MHz <u>Emission Designator</u> : 190KF1E	<u>Freq Band</u> : 174-216 MHz <u>Emission Designator</u> : 44K0F3E